10

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from Court of Appeals
M. J. Talbot, P.J., D. H. Sawyer and P. D. O'Connell, J. J.

MAYOR OF THE CITY OF LANSING;
CITY OF LANSING, MICHIGAN and
INGHAM COUNTY COMMISSIONER
LISA DEDDEN,

Appellees and Cross-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Cross-Appellee

and WOLVERINE PIPELINE COMPANY,

Appellant and Cross-Appellee.
_____/

Supreme Court No. **124136**

Court of Appeals No. 243182

MPSC Case No. U-13225

BRIEF OF CROSS-APPELLEE MICHIGAN PUBLIC SERVICE COMMISSION

***** ORAL ARGUMENT REQUESTED *****

MICHIGAN PUBLIC SERVICE COMMISSION

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Table of Contents

Page No.

Index of Authorities

Page No.

Cases

Statutes

Other Authorities

Rules and Regulations

Constitutional Provisions

Statement of Jurisdiction

This Supreme Court has jurisdiction over this matter pursuant to MCR 7.301(2) as it involves appeals by Wolverine Pipeline Company and the City of Lansing of the Court of Appeals June 5, 2003 decision affirming in its entirety a June 23, 2002 Opinion and Order of the Michigan Public Service Commission. Pursuant to an Order dated September 26, 2003, this Court granted applications for leave to appeal filed by both Wolverine and the City and directed the parties to include among the issues to be briefed whether Wolverine Pipeline Company is a "public utility" as that term is used in MCL 247.183, and the manner and extent to which paragraph (1) and (2) of MCL 247.183 apply to this case.

Counter-Statement of Questions Presented

I. Whether Wolverine is a "public utility" as that term is used in MCL 247.183?

The Court of Appeals did not address this issue.
Appellant/Cross-Appellee Wolverine Pipeline Company would say "Yes."
Cross-Appellee Michigan Public Service Commission says "Yes."
Appellee/Cross-Appellant City of Lansing says "Yes."

II. Whether Wolverine was required to obtain the City of Lansing's consent to the proposed pipeline?

The Court of Appeals said "Yes."
Appellant/Cross-Appellee Wolverine Pipeline Company would say "No."
Cross-Appellee Michigan Public Service Commission says "No."
Appellee/Cross-Appellant City of Lansing says "Yes."

III. Whether the consent of the City of Lansing, if such consent was required, must have accompanied Wolverine's application to the MPSC for approval of a proposed pipeline route?

The Court of Appeals said "No."
Appellant/Cross-Appellee Wolverine Pipeline Company would say "No."
Cross-Appellee Michigan Public Service Commission says "No."
Appellee/Cross-Appellant City of Lansing says "Yes."

Concise Statement of Material Facts and Proceedings

A. Nature of the Action

In a September 26, 2003 Order this Court granted Wolverine Pipeline Company's ("Wolverine") application for leave to appeal and the City of Lansing's ("City" or "City of Lansing") cross appeal of the Court of Appeals June 5, 2003 Order affirming a July 23, 2002 Order of the Michigan Public Service Commission ("MPSC" or "Commission"). The MPSC Order approved Wolverine's application to build a 26-mile liquid petroleum pipeline, a portion of which traverses the extreme southern portion of Lansing along an approximately five-mile stretch entirely within the I-96 right-of-way owned by the State of Michigan.

B. The Michigan Public Service Commission Proceedings

Pursuant to 1929 PA 16, MCL 483.1 *et seq.* ("Act 16"), which grants the MPSC authority to control the construction and routing of liquid petroleum pipelines, the MPSC issued its July 23, 2002 Order in Case No. U-13225 authorizing Wolverine to construct and operate its proposed pipeline.

The Commission held that the revised route using the I-96 right of way was reasonable and should be approved. The Commission found that a need for the proposed pipeline system had been demonstrated by clear and satisfactory evidence and that the system had been designed and routed in a reasonable matter. It further found that Wolverine should establish sentinel wells[1] in the wellhead protection area as needed and as proposed by the City of Lansing. Subject to that condition, the Commission granted Wolverine's request to construct, operate and maintain its proposed pipeline system, noting at page 11 of its order that Wolverine may be required to

[1] The sentinel wells are for monitoring for contaminants at the only locations along the pipeline route where the continuous clay and shale are discontinuous. This covers only about 100 ft. over the entire 26 mile route.

obtain consent from the City of Lansing before beginning construction of the project. (July 23, 2002 MPSC Order in Case No. U-13225, see Appendix to Wolverine Brief, page 1a).

C. The Court of Appeals Decision

On June 5, 2003 the Court of Appeals issued its published opinion affirming the Commission's order in MPSC Case No.U-13225, in its entirety, including the Commission's finding that the route is reasonable and the proposed pipeline safe. The Court further held that the consent of the City was required prior to Wolverine's construction of the pipeline, but that such consent was not required to accompany Wolverine's application before the MPSC. Wolverine's appeal seeks to overturn the Court of Appeals' ruling that the consent of the City is needed prior to construction of the pipeline. The City's appeal seeks to overturn the Court of Appeals' ruling that the City's consent need not have accompanied Wolverine's application before the MPSC. (Court of Appeals June 5, 2003 Opinion, see Appendix to Wolverine Brief, page 39a).

Argument

Introduction

In this appeal the City of Lansing seeks to block Wolverine from building a twenty-six mile liquid petroleum pipeline along the I-96 right-of-way owned by the State of Michigan. The need for the pipeline is undisputed as it will provide the continued, adequate, and safe supply of gasoline and other liquid petroleum products to the mid-Michigan area. However, a five-mile portion of the I-96 route traverses the extreme southern portion of the City of Lansing. Unlike all other local units of government whose territory is traversed by the proposed route, the City of Lansing has refused to give its consent to build the project. Whether and when such consent is needed is at issue in this case.

In proceedings before the MPSC, the City claimed that the pipeline route was unreasonable and the project unsafe. Based on a particularly strong evidentiary record the MPSC found otherwise. The Court of Appeals upheld these findings and the City has abandoned its challenge to the reasonableness and safety of the pipeline on appeal. Therefore, issues related to the need for the pipeline, the reasonableness of the proposed route, and the safety of the project have been fully and finally adjudicated. Thus, the City's appeal rests on mere procedural grounds.

The City claims that its consent is needed for the project, and that documentation of the City's consent should have accompanied Wolverine's application to the MPSC.

I. Standard for Review

This case involves interpretations of Const 1963, art 7, § 29, MCL 247.183, and MPSC Rule 460.17601. Such interpretations are questions of law which are reviewed *de novo*. *Cardinal Mooney High School v Michigan High School Athletic Association*, 437 Mich 75, 80; 467 NW2d 21 (1991).

II. Wolverine is a "public utility" as that term is used in MCL 247.183.

In its order granting leave to appeal, this Court directed that the parties include in their issues to be briefed the question of whether Wolverine is a "public utility" as that term is used in MCL 247.183. For the reasons that follow Wolverine is a public utility as that term is used in MCL 247.183.

MCL 247.183 provides:

> (1) Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, subject to subsection (2), longitudinally within limited access highway rights-of-way, and across or under any of the waters in

this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.

(2) A utility as defined in 23 C.F.R. 645.105(m) may enter upon, construct, and maintain utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations. The standards shall require that the lines and structures be underground and be placed in a manner that will not increase highway maintenance costs for the state transportation department. The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights-of-way. The imposition of a reasonable charge is a governmental function, offsetting a portion of the capital and maintenance expense of the limited access highway, and is not a proprietary function. The charge shall be calculated to reflect a 1-time installation permit fee that shall not exceed $1,000.00 permit of longitudinal use of limited access highway rights-of-way with a minimum fee of $5,000.00 per permit. All revenue received under this subsection shall be used for capital and maintenance expenses incurred for limited access highways.

The common thread running through various definitions of "public utility" is the delivery of useful services to the public rather than for a strictly private use:

> The term "public utility" means every corporation, company, individual, or association that may own, control, or manage, except for **private use**, any equipment, plant or generating machinery in the operation of a public business or utility; **utility means the state or quality of being useful.** (emphasis added).
>
> *Bruce Township v Gout (After Remand)*, 207 Mich App 554; 526 NW2d 40 (1995).

In *Charter Township of Meridian v Roberts*, 114 Mich App 803; 319 NW2d 678 (1982), the Court of Appeals relied on an Attorney General opinion that discussed what systems constituted public utilities for purposes of Michigan Constitutional law, concluding that such public utilities may be identified from the list of systems included under the jurisdiction of the Public Service Commission in the act establishing that agency. Under Section 6 of 1939 PA 3, the MPSC has jurisdiction to regulate "all public utilities" and may:

> hear and pass upon all matters pertaining to, necessary, as incident to the regulation of public utilities, including . . . oil . . . and pipeline companies.

MCL 460.6. As an oil pipeline company, Wolverine falls within the scope of "public utilities" covered by 1939 PA 3, as well as by act administered by the MPSC pertaining to oil pipelines.[2] Wolverine is thus a public utility under 1929 PA 16, as amended, MCL 483.1 *et seq.*, the Act pursuant to which Wolverine filed its application with the MPSC.

As an oil pipeline company Wolverine may be considered a public utility within the meaning of MCL 247.183.

III. As a 23 CFR 645-identified utility, Wolverine was not required to obtain the City of Lansing's consent to the proposed pipeline route at issue here.

Wolverine's application was not subject to the consent requirement found in MCL 247.183(1). Instead Wolverine's application fell exclusively within more specific provisions of MCL 247.183(2) which only requires the Company to obtain consent from the State Transportation Commission for permission to use the I-96 right-of-way.

The Court of Appeals discussed various amendments to MCL 247.183. The Court correctly observed that a 1994 amendment to that statute replaced the phrase in subsection (1) "except longitudinally within limited access highway rights-of-way ..." with the phrase "including, subject to subsection (2) longitudinally within limited access highway rights-of-way," and concluded that this amended language brought within subsection (1) longitudinal projects generally. However, the statute by its own terms does not subject utilities identified by 23 CFR 645 to the current requirement of subsection (1). Under the doctrine of the last antecedent, qualifying words and phrases in a statute refer solely to the last antecedent where no

[2] 1929 PA 16, MCL 483.1, *et seq.*

contrary intention appears. *Kizer v Livingston County Bd. of Commissioners*, 38 Mich App 239, 252; 195 NW2d 884 (1972). In this instance the last antecedent prior to "including, subject to subsection (2)," deals with permissible locations for the projects, i.e., "over, across, or under any public road, bridge, street, or public place." It cannot refer to the utilities mentioned before that, as that subject would be the next to the last antecedent. Thus, longitudinal projects are subject to subsection (1) and local consent requirements if constructed by subsection (1) utilities. However, a qualifier, i.e., "subject to subsection (2)," appears to have been ignored by the Court of Appeals. Thus, in subsection (2) the State Transportation Commission is the sole permitting authority for a 23 CFR 645 utility constructing longitudinal projects in limited access highway rights-of-way.

While the Court of Appeals was correct to address the topic of 23 CFR 645 utilities[3] as a separate group, its analysis is nevertheless flawed. The Court held that failure to apply the local consent requirement found in subsection (1) would render the first sentences of subsections (1) and (2) redundant. As it noted, "it is important to ensure that words in a statute not be ignored, treated as surplusage, or rendered nugatory." *Robertson v Daimler Chrysler Corp*, 645 Mich 732, 748; 641 NW2d 567 (2002). However, the Court of Appeals analysis has the very effect the Court tried to avoid, i.e., it makes the first sentence in subsection (1) and the first sentence in subsection (2) redundant.

Again, subsection (1) provides:

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[3] A "utility" is defined in 23 CFR 645.105(m) as follows: Utility – a privately, publicly, or cooperatively owned **line, facility or system** for producing, transmitting, or **distributing** communications, cable television, power, electricity, light, heat, gas, **oil, crude products**, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire, or police signal system, which directly or indirectly serves the public. The term utility shall also mean the utility **company** inclusive of any wholly owned or controlled subsidiary. [emphasis added].

(1) Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities **may enter upon, construct, and maintain** telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, subject to subsection (2), longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.

MCL 247.183(1) [emphasis added].

Subsection (2) states that:

(2) A utility as defined in 23 C.F.R. 645.105(m) **may enter upon, construct, and maintain** utility lines and structures longitudinally within limited access highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations. The standards shall require that the lines and structures be underground and be placed in a manner that will not increase highway maintenance costs for the state transportation department. The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights-of-way. The imposition of a reasonable charge is a governmental function, offsetting a portion of the capital and maintenance expense of the limited access highway, and is not a proprietary function. The charge shall be calculated to reflect a 1-time installation permit fee that shall not exceed $1,000.00 permit of longitudinal use of limited access highway rights-of-way with a minimum fee of $5,000.00 per permit. All revenue received under this subsection shall be used for capital and maintenance expenses incurred for limited access highways. MCL 247.183(2) [emphasis added].

The Legislature chose to define the class of entities subject to subsection (2) in a manner different than those to which subsection (1) applies. At the same time, it began each subsection with basically the same enabling language, i.e., "may enter upon, construct and maintain . . ." To avoid rendering that language in each subsection redundant, this Court must conclude that subsection (2) is more than a mere extension of subsection (1). Instead, it was enacted by the Legislature separately from subsection (1) to set forth those requirements that are applicable to

longitudinal construction in limited access highway rights-of-way of major construction projects of interstate utilities. Such construction projects have no local consent requirement.

Moreover, if 23 CFR 645 utilities are identical to those utilities referenced in subsection (1), there is no reason to impose the extra requirement of obtaining a State Highway Commission installation permit as found in subsection (2) [specifically directed at 23 CFR 645 utilities] and not apply that requirement to all utilities under subsection (1). If such requirements are applicable to all utilities as the City claims (Brief, p. 27), there would be no reason for subsection (2) to reference anything other than a fee change, and mandating that instead of the City receiving revenue, all revenue was to be used for limited access highways.

The reference to 23 CFR 645 utilities by the Legislature in subsection (2) represents a legislative recognition that such companies have an extended area of service. 23 CFR 645 utility projects will generally be much larger and cover far more miles of highway than local utility projects. *Lakehead Pipeline Co v Dehn*, 340 Mich 25; 64 NW2d 903 (1954), involved a pipeline between 500 and 600 miles long within the State of Michigan that was part of a much larger interstate system. Had that pipeline been built largely along limited access highway rights-of-way, under the then-existing installation fees, the permit fees could potentially have exceeded half a million dollars. A much smaller local project would, by contrast, have been less than one mile long. It would be normal for a one hundred mile project to pass through or along dozens of local governmental units and involve hundreds of individual condemnation proceedings. Under the City's interpretation, a large project could be forced to secure local permits from dozens of governmental units. By contrast, if such projects are placed in limited access highway rights-of-way pursuant to a single highway permit, many of these difficulties are avoided and the public interest in securing such utility projects are served. Indeed, the number of local units of government along which a large interstate utility project in Michigan might pass could render

construction of such a project virtually impossible. A single denial of a permit by one of perhaps 30 units of local government could thwart an entire statewide project, or at least significantly delay it with substantial, even fatal, financial consequences. Unless the Court of Appeals' interpretation of MCL 247.183 is rejected such an undesirable result becomes a reality.

Precedent does not support the City's claim that its consent to the proposed pipeline route at issue here is required. Although *Union Township, Isabella County v City of Mt. Pleasant*, 381 Mich 82; 158 NW2d 905 (1968), indicates that the local consent requirement extends to utility use of state highways, it is significant to note that the case was decided before subsection (2) of MCL 247.183 was added in 1989 and amended in 1994. While *Union Township* does not address subsection (2), which clarifies when a local consent is not required, Michigan courts have long recognized the importance of the State maintaining authority over its highways. For example, in *Allen v Ziegler*, 338 Mich 407; 61 NW2d 625 (1953), the state highway commissioner, pursuant to authority granted by statute, prohibited parking on a state trunk line highway located in the City of East Lansing. City residents argued that this action unlawfully interfered with the city's constitutional right to control its roads.[4] This Court looked to the Legislature's interpretation of what was considered a city's "reasonable" control of its streets, finding that such control did not allow the city to override the state's regulation of a state trunk line highway. *Id.* at 415-416. In reaching this decision, this Court noted that:

> [t]he State by the establishment of a trunk line highway which includes the street in question in East Lansing . . . assumed an obligation to the people of the state in general to see to it that [t]he street in question . . . is so maintained and controlled as to be reasonably available for the flow of traffic. *Id.* at 416

[4] Plaintiffs relied on Article VIII, § 28 of Michigan's 1908 Constitution, which preceded and was nearly identical to current Article VII, § 29.

The State of Michigan's authority to regulate a state highway to promote purposes broader than local concerns, therefore, was found to override a city's control over a highway passing through its city limits.

Similarly, in *Case v City of Saginaw*, 291 Mich 130; 288 NW 357 (1939), a city, the state highway commissioner, a railroad company and others sought to build a bridge over a river within the city's limits along a state trunk line highway. Private property owners argued that the state highway commissioner's decision to alter the street violated the city's constitutional right to control the street. This Court held that the State Constitution did not deprive the State of its authority to control highways and remarked:

> [i]n other words, the municipality retains reasonable control of its highways, which is such control as cannot be said to be unreasonable and inconsistent with regulations which have been established, or may be established, by the state itself with reference thereto. *Id.* at 140.

In *Jones v City of Ypsilanti*, 26 Mich App 574; 182 NW2d 795 (1971), a woman injured on a sidewalk abutting a state trunk line highway sued the city. The city argued that only the state has jurisdiction to maintain such sidewalks. In response, the Court of Appeals stated:

> Municipalities were meant to retain reasonable control over state trunk line highways located within their boundaries so long as that control pertains to local concerns and does not conflict with the paramount jurisdiction of the state highway commission. *Id.* at 580.

The paramount jurisdiction of the State of Michigan over state trunk line highways established by these cases is equally applicable to the instant case. Here, there is a well-established, undisputed public need for the pipeline. Additionally, the proposed pipeline project is part of an interstate pipeline project. Moreover, the proposed pipeline is located wholly within the right-of-way of a state highway. Finally, the proposed pipeline has obtained the requisite federal and state approvals that may not be overridden by the City of Lansing.

Further, Attorney General Opinion No. 5746, OAG 1980, No 5746, page 892 (July 25, 1980) discussed the same statutory section cited by the City of Lansing, *i.e.*, MCLA 247.183. That opinion addresses whether the state may permit a telephone company to bury lines or a gas company to install gas mains on the easement along a state highway without first obtaining permission from the grantor of the easement. After citing *Governale v City of Owosso*, 387 Mich 626; 198 NW2d 412 (1972), and *People v Eaton*, 100 Mich 208; 59 NW 145 (1894), the Attorney General concluded that where the public's ability to continue use of the facility is protected and environmental care is exercised, "the state has the authority to grant permission to both a telephone company to buy telephone lines and to a gas company to install gas mains on State trunklines, public roads, bridges, streets, or public places. It makes no difference whether the State's interest in the land is one of fee or easement, for the State is entitled to use the land for highway purposes and is not required to obtain permission from the grantor of the easement before gas main may be installed or telephone line buried." OAG, 1980, No 5746, page 892 (July 25, 1980). In the instant case, the I-96 right-of-way where the pipeline will be placed is owned in fee simple by the State of Michigan. Thus, even if Act 16, MCL 483.1 *et seq.*, required that certain consents accompany Wolverine's application before the MPSC, which it clearly does not, it is equally clear that the City of Lansing's consent does not need to be obtained prior to construction of the pipeline in these circumstances.

Having abandoned its claim that the pipeline route is unreasonable and the project unsafe, the City now merely seeks to block construction of a pipeline project, the need of which is undisputed. Therefore, it is singularly appropriate for the Court in this case to confirm that the broader interests of Michigan citizens in securing critical gasoline supplies and the interest of the State in controlling its highways are paramount over merely local concerns.

IV. Even if the consent of the City of Lansing is required, such consent is not required to accompany an application to the MPSC for approval of a proposed pipeline route.

The City argues that Rule 601(2)(d) of the Commission's Rules of Practice and Procedure, R 460.17601(2)(d) requires that the city's consent accompany an application to the Commission for approval of a proposed pipeline project. Rule 601 states:

> R 460.17601 Public utilities; new construction
>
> Rule 601. (1) An entity listed in this subrule shall file an application with the Commission for the necessary authority to do the following:
>
> (a) A gas or electric utility within the meaning of the provisions of Act No. 69 of the Public Acts of 1929, as amended, being § 460.501 *et seq.* of the Michigan Compiled Laws, that wants to construct a plant, equipment, property or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.
>
> (b) A natural gas pipeline company within the meaning of the provisions of Act No. 9 of the Public Acts of 1929, as amended, being § 483.101 *et seq.* of the Michigan Compiled Laws, that wants to construct a plant, equipment, property or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.
>
> **(c) A corporation, association, or person conducting oil pipeline operations within the meaning of the provisions of Act No. 16 of the Public Acts of 1929, being § 483.1 *et seq.* of the Michigan Compiled Laws, that wants to construct facilities to transport crude oil or petroleum or any crude oil or petroleum products as a common carrier for which approval is required by statute.**
>
> (2) The application required in subrule (1) of this rule shall be set forth, or by attached exhibits show, all of the following information:
>
> (a) The name and address of the applicant.
>
> (b) The city, village or township affected.
>
> (c) The nature of the utility service to be furnished.
>
> **(d) The municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.**
>
> (e) A full description of the proposed new construction or extension, including the manner in which it will be constructed.
>
> (f) The names of all utilities rendering the same type of service with which the proposed new construction or extension is likely to compete.

(3) A utility that is classified as a respondent pursuant to the provision of R 460.17101 may participate as a party to the application proceeding without filing a petition to intervene. It may file an answer or other response to the application.

R 460.17601 (emphasis added).

The City alleges that the phrase "if required" found in Rule 601(2)(d), means evidence of local consent for the project must accompany the application if required by the city, pursuant to Const, art 7, § 29, or by any statute or rule (Brief, p. 36). The City's argument is unreasonable because the public has no interest in imposing a particular sequence in which various permit requirements are obtained for a pipeline project as long as the requirements are met prior to commencing construction of the project.

The Commission's July 23, 2002 order neither violates Rule 601, nor does it authorize Wolverine to disregard any applicable permit requirements that may exist, as the following excerpt from that order makes quite clear:

> The Commission finds that it is not bereft of subject matter jurisdiction over the instant application merely because Wolverine did not include proof of having obtained the consent of affected municipalities. **In the Commission's view, even if Wolverine is required to obtain the consent or a franchise from the City of Lansing before it begins constructing the pipeline within the city limits, the state constitution, the cited statutes, and the Commission's rules do not require Wolverine to do so before the application may be considered and disposed of by the Commission.** Because no law requires that Wolverine provide those consents or franchises with its application, Rule 601(2)(d) does not require that the Commission dismiss the case. Therefore, the City of Lansing's motion to dismiss is denied. (July 23, 2002 Order, p. 11, emphasis supplied).

Thus, the Commission's decision acknowledges the possibility that certain consents must be obtained before construction of the pipeline can proceed. The Commission order does not conflict with any other statute or law including MCL 247.183 or Const 1963, art 7, § 28.

The construction given to a statute by the agency charged with administering that statute is entitled to the most respectful consideration and ought not to be overruled without cogent

reasons. *Gibbs v General Motors Corp*, 134 Mich App 429, 432; 351 NW2d 315 (1984). The same principle applies with respect to the Commission's interpretation of its own rules. The MPSC's interpretation of Rule 601 is both lawful and reasonable, and should be affirmed.

Rule 601 applies to "public utilities; new construction" and addresses applications under Act 69 of 1929 ("Act 69"), MCL 460.501 *et seq.*, Act 9 of 1929 (Act 9), MCL 483.101 *et seq.*, and Act 16 of 1929 ("Act 16"), MCL 483.1 *et seq*. Wolverine's application was properly brought under Act 16 since it relates to a liquid petroleum pipeline proposal. The relevant question, therefore, is whether Act 16 requires the referenced consents to accompany the application. With respect to whether local consents must accompany an application at the MPSC, the phrase "if required" in Rule 601(2)(d) clearly implies that some applications referenced in subrule (1) are not required to have the franchises or consents attached and that any applicable consents may be obtained later, prior to construction of a project. Only Act 69 requires the consent to accompany the application. This requirement is consistent with the purpose of Act 69 which is to prevent duplication of facilities and to avoid waste inherent in situations in which [a second] public utility seeks to serve another utility's existing customers. *City of Marshall v Consumers Power Co.*, 206 Mich App 666, 678; 523 NW2d 483 (1994); *lv den*, 449 Mich 862 (1995).

Moreover, the City's argument, at page 36 of its brief, that the phrase "if required" means "if the city requires it" is wholly unreasonable because it implies that a city may choose not to require consent with respect to an Act 69 application. However, consent is always required. The City's argument in this regard is at odds with the intent underlying Act 69. The City's interpretation could encourage duplication of facilities, and lead to a result contrary to the intent of the Legislature.

Although the City repeatedly claims that various laws and cases require certain local consents be obtained before construction of a liquid petroleum pipeline may commence, it fails to carry its burden of proving its theory that there is a mandatory sequence in which such consents must precede or accompany the application at the MPSC.[5] Neither MCL 247.183 nor Const, art 7, § 29 require applicable local consent to accompany pipeline applications at the MPSC. They only require applicable permits prior to construction or use. Therefore, the City's argument to the contrary is without merit.

Conclusion and Relief

The MPSC and the Court of Appeals correctly decided that under applicable law the consent of the City of Lansing need not have accompanied Wolverine's application before the MPSC for approval of its pipeline project. As the I-96 route traverses the City of Lansing at its very perimeter, whatever local concerns the City may have should give way to the critical interests of the State of Michigan in having the Wolverine pipeline constructed, for it will provide crucial gasoline supplies for the entire east-central, central and north-central areas of Michigan for the foreseeable future. This is particularly true where, as here, the City has abandoned its arguments claiming the proposed I-96 pipeline route is unreasonable or that the

[5] MCL 462.26(8) provides that in all appeals of a MPSC order "the burden of proof shall be upon the appellant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable."

project is unsafe. Accordingly, the MPSC respectfully requests this Honorable Court to affirm the Commission's order and allow construction of the Wolverine pipeline to proceed.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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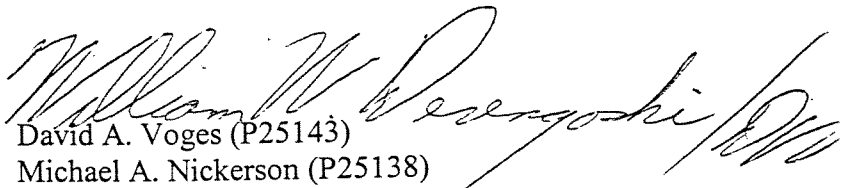

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Pamela A. Walters, being first duly sworn, deposes and says that on November 6, 2003, she served a copy of Cross-Appellee Michigan Public Service Commission's Brief upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

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Pamela A. Walters

Subscribed and sworn to before me
this 6th day of November, 2003.

Linda S. Andreas, Notary Public
Ingham County, Michigan
My Commission Expires: 03/22/06